Item No. 3(f)(2)(ii)
April 28, 2014

___ Action

___ Discussion

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SUBJECT: **FEDERAL LEGISLATIVE UPDATE**

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POLICY ISSUE: Congress, the Administration, and federal agencies each year approve actions that impact the City in a broad range of areas. Staff may recommend, and/or Council may wish to direct, communication to the City's Congressional delegation on a range of issues throughout the year.

DIRECTION NEEDED FROM COUNCIL: This briefing provides information on the current activities of Congress. The information comes from reports from various federal sources and lobbying groups.

BACKGROUND:

MOVING AHEAD FOR PROGRESS IN THE 21ST CENTURY REAUTHORIZATION (MAP-21)

MAP-21 expires on September 30, 2014. Congress and the transportation industry have become used to the fact that surface transportation authorization bills are rarely passed on time and a series of short-term policy extensions is usually required. However, this time, simply extending the authorizing language will not be enough because the Highway Trust Fund will not have sufficient funds to pay for the extensions. As early as August, the Trust Fund, particularly the Highway account, is expected to be insolvent. Therefore, Congress must decide not only what policy provisions to include in the next reauthorization bill; it must decide how to find new revenue to fund the bill. There is strong support from the industry for a gas tax increase (the easiest and quickest revenue raiser), including from a number of stakeholders who might be expected to oppose an increase, such as the American Trucking Association and the US Chamber of Commerce. However, Congress does not appear to have the will to take on such a politically-charged issue prior to the November mid-term elections. As a result, Congress will have to pass some sort of short-term funding bill, most likely before leaving for the August recess.

While there are a number of possible revenue sources other than raising the gas tax, such as the currently popular option of amending the tax code to encourage repatriating corporate overseas profits, it is unlikely that there could be approved and implemented in time. Therefore, yet another General Fund transfer is likely. Estimates are that approximately $10 billion would be needed to be transferred from the General Fund just to provide sufficient revenue through the end of the calendar year – on top of $53 billion previously transferred over the past few years. The most likely opportunity for Congress to possibly consider a gas tax increase or other long-term revenue options may be the post-election lame duck session of Congress when members may no longer feel as politically vulnerable.

The latest estimate is that the highway account of the Trust Fund will reach its minimum balance by **August 29** and the transit account by **September 26**. In anticipation, a number of state DOTs have already announced that they are starting to slow down procurements. This situation presents a serious problem for the House and Senate transportation authorizing committees. While they have jurisdiction over drafting a multi-year MAP-21 reauthorization bill and any required short-term policy and program extensions, they do not have authority over increasing or finding new Trust Fund revenues. That falls to the Senate Finance Committee and the House Ways & Means Committee, neither of which have indicated how or when they intend to deal with the looming funding crisis.

Despite not knowing how much money they have to spend on existing, much less, new programs, the House and Senate authorizing committees are moving forward with drafting multi-year reauthorization bills. The Senate appears to be leaning towards writing a bill with few major policy changes or additions, other than perhaps a more expansive freight title. They feel that although MAP-21 only authorized two years of funding, it essentially made six years' worth of policy changes and reforms, many of which have not yet been implemented or tested. Earlier this month, the "Big 4" bipartisan leadership of the Senate Environment & Public Works (EPW) Committee, includes Senator David Vitter (R-LA), Senator Tom Carper (D-DE), Senator John Barrasso (R-WY), and chaired by Senator Barbara Boxer (D-CA), which has jurisdiction over the highway program, held a press conference to announce joint reauthorization principles:

- Passing a long-term bill, as opposed to a short-term patch;
- Maintaining the formulas for existing core programs;
- Promoting fiscal responsibility by **keeping current FY'14 levels of funding, plus inflation**;
- Focusing on policies that expand opportunities for rural areas;
- Continuing efforts to leverage local resources to accelerate the construction of transportation projects, create jobs, and spur economic growth ; and
- Requiring better information sharing regarding federal grants.

The EPW leaders stated that they hope to act on their bill in early May. They also indicated they will encourage the Banking Committee (which has jurisdiction over transit programs) and the Commerce Committee (which has jurisdiction over highway safety programs) to act on their portions of the overall bill as soon as possible so that action can move to the Senate Finance Committee.

In the House, Transportation & Infrastructure (T&I) Committee Chairman Bill Shuster (R-PA) has indicated he wants to write a more expansive reauthorization bill, including a variety of new policy initiatives especially in the freight area. He continues to state that the House will pass a reauthorization bill on time, but has not outlined a specific schedule.

The other player in the reauthorization effort, the Administration, still plans to release a formal reauthorization proposal, possibly before the end of April. It is expected to flesh out the numerous policy initiatives first outlined in the US DOT FY'15 budget request.

FY'15 BUDGET AND APPROPRIATIONS

In mid-April, the House very narrowly passed the controversial FY'15 Budget Resolution drafted by House Budget Committee Chairman Paul Ryan (R-WI) with no Democratic votes. However, the Senate has indicated it does not plan to pass its own version of a Budget Resolution since it previously agreed to overall spending levels for FY'15 in the December 2013 budget deal. Therefore, the House and Senate Appropriations Subcommittee is proceeding to mark-up the individual federal agency funding bills. Also, the House Appropriations Committee tentatively approved the FY'15 Military Construction/VA and the Legislative Branch funding bills, pending action to approve a formal allocation of funding to the various appropriations subcommittees.

There is speculation that the US DOT appropriations bill may be one of the last to be passed since there is not enough revenue in the Highway Trust Fund to fully fund DOT programs for the entire fiscal year and because the bill may be used as a legislative vehicle for a short-term transfer of General Funds to keep the Trust Fund solvent for some period of time.

TAX EXTENDERS ON DECK, COMPLETION MAY WAIT UNTIL FALL

April is tax month in more ways than one, as the new Chair of the Senate Finance Committee, Ron Wyden (D-OR), launched into tax policy right away marking up and passing his bill to extend a number of expired tax breaks. Wyden's EXPIRE Act – or "tax extenders bill" as it's commonly referred to – is a package of about 50 tax breaks that have been routinely extended every two years. Wyden's bill extends almost all of the provisions in current law at a cost of $85.3 billion. Included were popular provisions such as the ability to deduct state and local sales tax for states that don't have an income tax, research and development tax credits, wind-energy tax credits and an extension of Sec. 179 allowing businesses to immediately expense up to $500,000 of qualified equipment and property. Chairman Wyden noted, however, that this would be the last tax extenders bill while he is Chairman and that Congress needs to focus on an overhaul of the nation's tax policy.

The path forward for extenders promises to be more measured in the House, with Ways and Means Chairman Dave Camp (R-MI) adopting a provision-by-provision approach. Chairman Camp, who recently announced his retirement, held a hearing this week to look at those tax extender provisions that could be made permanent, focusing primarily on the temporary provisions he made permanent in his tax reform plan released in February. He's asked members who support extending provisions not included in his tax plan to introduce stand-alone bills that will be considered individually. As a reminder, revenue measures are required to originate in the House, so expect this conversation to continue throughout the year, with real movement to take place after the November elections.

HOUSE PASSES RYAN BUDGET, APPROPRIATORS SET QUICK PACE ON FY2015 SPENDING BILLS

Earlier this month, the House passed Congressman Ryan's budget blueprint to cut $5 trillion in spending over the next ten years. The plan passed 219-205 with only 12 Republicans voting against the measure, significant since 62 Republicans voted against the Ryan-Murray bill in

December because it did not reduce spending enough. Congressman Ryan's plan has the same topline spending level as the December bill for discretionary programs set at $1.014 trillion.

While Ryan's budget does not carry the force of law, nor will it be implemented (Senator Patty Murray (D-WA) indicated weeks ago she would not be writing a separate Senate plan this year), the document does provide a messaging platform for Republican priorities and is similar to Republican budget plans floated since 2011. It also lends some insight into priorities Congressman Ryan might have as a possible new Chair of the House Ways and Means Committee given Rep. Camp's recent retirement announcement. Included in the proposal is a repeal of the Affordable Care Act, a tax reform mandate to reduce top rates to 25% and a commitment to protect defense spending by increasing funding by $482 billion over nine years.

Appropriators, meanwhile, have been moving ahead, working to the overall funding levels set in the December Murray-Ryan budget compromise. Given the opportunity for regular order this year, appropriators have set a quick pace and intend to move bills as fast as possible. Subcommittee agency hearings are well underway, and Member funding and language requests have all been submitted to relevant subcommittees.

House Appropriations Chair Hal Rogers (R-KY) has indicated he hopes to have all 12 bills out of committee by July 4 and through the floor prior to August recess. The House Appropriations Committee has already approved the FY'2015 Military Construction and Veterans Affairs appropriations bill. Senate Appropriations Chair Mikulski said she'd like the Senate to stay in sync with the House so they can conference bills as they go and avoid being forced into a continuing resolution scenario. Following the Easter district work period, expect appropriations bills to begin moving in earnest with the typically challenging and controversial bills like Labor-HHS being the last to move.

THE ENVIRONMENTAL PROTECTION AGENCY (EPA) AND THE US ARMY CORPS OF ENGINEERS (USACE) RELEASE CONTROVERSIAL DRAFT WATERS OF THE US RULE

The EPA is no stranger to controversial issues and it launched into its latest rule-making with a robust communications plan including YouTube videos, op-eds and listening tours. The agency did so with good reason, because its proposed rules defining the "Waters of the United States" could have broad impact on business communities, farmers and ranchers, as well as municipal governments that have to both comply with and potentially issue permits for the revised rule.

How broadly or narrowly the term "waters of the United States" is defined has been a central question of Clean Water Act (CWA) policy for almost 40 years. According to the EPA and USACE, its rulemaking on this issue is in response to two Supreme Court Cases in 2001 and 2006 that created confusion and uncertainty about what bodies of water were to be regulated. In particular, the concern is with wetlands and streams that feed into larger bodies of navigable water, as well as those bodies of water that tend to be temporary, seasonal or "ephemeral". The agency says the rules are intended to bring clarity and predictability to the business and agricultural community.

EPA's draft released in late March would clarify that the waters of the US to include:

- Most seasonal and rain dependent streams,
- Wetlands near streams; and,
- "Other waters" could be determined to be waters of the US on a case-by-case basis either on their own or in a grouping, by showing they have a significant nexus to a traditional navigable water, interstate water or territorial sea.

Exemptions for agricultural practices established in the CWA would continue, including those for agricultural stormwater discharges and maintenance of drainage ditches. The proposed rules are based on EPA's Science Advisory Board study draft that was released in September 2013 and will be finalized sometime in 2015. The agency expects to finalize the rule along the same timeframe as the final study is released. Comments on the draft rule will be accepted for 90 days.

Business groups, agriculture and Republicans on the Hill are already raising strong concerns about the agency overreaching its authority and the practical impact of this rule. Although the agency insists its rule is consistent with the Supreme Court's narrow reading of the CWA, there are concerns that the rule potentially extends EPA regulatory authority over millions of acres of wetlands and two million of miles of streams, imposing new permitting requirements that could cost thousands of dollars and take months, if not years, to obtain. The agency (along with USACE) has been under fire for the way it has approached this rulemaking, and EPA Administrator Gina McCarthy has been in the hot seat a number of times before Congressional committees on this issue.

COLUMBIA RIVER TREATY (CRT) UPDATE

The process of updating the Columbia River Treaty – the 50 year old agreement addressing hydropower and flood control between the US and Canada in the Columbia River Basin – continues to move forward. With the US Entity submitting its Regional Recommendation to the State Department late last year, much of the recent CRT news has come from north of the border. Last month, British Columbia announced its decision on the CRT, affirming the province's draft decision to continue the CRT and seek improvements within its existing framework.

The final decision recognizes the ongoing benefits of the CRT for both countries, but seeks to expand the power benefits it receives under the treaty. That stance reflects a major difference with the US view on the balance of power benefits – and could have a big impact on Northwest ratepayers and regional stakeholders. Principles in the final decision also include adding flexibility to address ecosystem and climate change needs. Because salmon passage in the Canadian portion of the Columbia River Basin was cut off by the construction of Grand Coulee dam prior to the CRT, restoration of fish passage should be the responsibility of each country, according to the decision.

While BC is handling negotiations on behalf of Canada, the responsibility lies with the US State Department and the Obama Administration on our side of the border. The Regional

Recommendation from the US Entity strongly encouraged the State Department and the Administration to take quick action on the CRT. Members of the Northwest congressional delegation also seem to be placing their support behind this timeline. Expect continued conversation among stakeholders regarding the appropriate venue for negotiations – DC or the region. And with the wide range of interests active on this issue, finding the right balance will certainly require threading the needle.

AFFORDABLE CARE ACT UPDATE

The Affordable Care Act (ACA) implementation continues. Early April saw the Obama Administration celebrating the enrollment of over seven million people having signed up for health insurance, it also saw the first instance of Republicans supporting a change to the law that would actually *help* individuals obtain coverage.

Small group deductible caps: At Republicans' request, tucked into recently-passed legislation that prevents a cut in payments to doctors who treat Medicare patients was a provision eliminating a cap on deductibles for small group policies offered both inside and outside exchanges; the cap was set at $2,000 for individuals and $4,000 for families. Republicans said they sought the provision so small businesses can offer high-deductible plans that could be purchased by individuals who also have health savings accounts. It is unclear how many House Republicans knew of the provision because the underlying legislation was passed by a highly unusual voice vote without debate. The health law contains no deductible caps for individual plans or those offered by large employers, and the Department of Health and Human Services already had waived them for small businesses through 2015. The legislation means they will never go into effect.

Definition of full-time worker: An effort to change the ACA's definition of a full-time worker to ease its requirements on businesses has gained bipartisan support on Capitol Hill, as the Republican House recently passed a bill to make the change with the help of 18 Democrats. In the Senate, a similar measure has attracted two Democratic co-sponsors and has been floated as part of a potentially bipartisan package to raise the minimum wage. Republicans are pushing the issue hard, and sought to attach it (unsuccessfully) as an amendment to unemployment-insurance legislation. The provision would change the definition of a full-time worker to those who work 40 hours a week, up from 30 hour per week definition included in the ACA.

Delays and policy changes: Over the past several weeks, the Administration has continued to show its willingness to enact delays and policy changes to the ACA. The employer mandate was delayed until 2016 for employers with 50-99 full-time employees; states and insurers can allow cancelled plans through 2016; premium tax credits are allowed for identical non-exchange plans through 2014; and the enrollment period was extended until April 15 for those who faced "difficulties" obtaining coverage before March 31. Several state exchanges, including Washington's and Oregon's, had similar special enrollment deadlines.

Medicare Advantage payment rates: In what is being billed as a win for health insurers, the Centers for Medicare and Medicaid Services (CMS) announced that Medicare Advantage payment rates would increase on average by .4%. These payment rates are a key factor in how insurers plan their business for the coming year. CMS initially announced in February that the overall net change to plan payments between 2014 and 2015 would be a reduction of 1.9%. This drew vocal opposition from insurers and many Members of Congress – including dozens of Democrats – who support the program and don't want to appear unsupportive of seniors during the run-up to midterm elections. In spite of this week's announcement, insurers are still predicting an overall reduction in payment amounts from 2014 levels.

ALTERNATIVES: N/A

RECOMMENDATIONS: N/A